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No. 07-945

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In The

Supreme Court of the United States

VIKAS SAREEN,

Petitioner,

v.

REEMA SAREEN,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeal Of The State Of California

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

The Respondent Reema Sareen requests that this Court deny the petition for writ of certiorari, seeking review of the California Court of Appeal opinion in this case. That opinion is reported at 153 Cal.App.4th 371.

STATEMENT OF FACTS

1. Apart from the point that they are irrelevant to the determination of the only issue litigated in this case, viz., custody jurisdiction, Petitioner's allegations about fraud purportedly committed by Respondent and her purported attempts to abort the minor are totally false.

2. Petitioner's statement that "[w]hile in India in August of 2004, frustrated by Respondent's on-going cruel and inhumane behavior, Divorce and Custody proceedings were filed in Delhi District Court . . . " is deceptive in its failure to disclose the material facts that define the essence of this case, viz., *forum-shopping*.

On August 20, 2004, Petitioner took his wife, Respondent Reema Sareen, and their baby daughter S., then exactly six months old, to India. Respondent was under the impression that they were going to Switzerland for a vacation. She certainly did not expect Petitioner to file for divorce in India a week after landing there, and was not prepared for

Petitioner's next move, which was to return to the state of marital residence, New York, without making any provisions for their support and sustenance in India. To this day, Petitioner continues to reside in New York and has never returned to India.

Respondent and the baby were unable to leave India because their travel documents went missing. Petitioner disputes Respondent's statement that he took her travel documents (U.S. residency papers and Indian passport) and the baby's American passport, but, as the California Court of Appeal states " . . . the record clearly establishes the documents were lost and husband blocked wife's attempt to get a U.S. passport for S. by refusing to give his consent 'for purposes relating to certain court proceedings' and husband filed requests and applications in the Indian Courts seeking to keep wife and S. in India. "Contrary to Petitioner's representations to the trial court that Respondent left India in violation of a court order, the Indian courts never issued any orders to restrain Respondent and S. from leaving India. Nor was their departure from India "surreptitious," as Petitioner claims in his Petition [Factual Background, page 2]; again the record below shows that Respondent took very public steps to prepare for their return to United States, such as applying for and receiving clearance for the minor to leave India from the Asst. Foreigners Regn. Office, Head Quarters, New Delhi.

The minor's odyssey has taken her from New York, which she left at age six months, to Sacramento, California, where she arrived at age 20 months, after

more than a year of an enforced stay in India. She just celebrated her fourth birthday on xxxx xx, xxxx, in Sacramento. She is an American citizen, settled in Sacramento, where she has extended family. Her parents both live in the United States, and there is no likelihood that any of these individuals, parents or child, will move to India in the foreseeable future.

PROCEDURAL BACKGROUND

1. On November 15, 2007, the Guardianship Court, Delhi, India, issued its decision on the question presented to that court, "*Whether this court has territorial jurisdiction to try this case as admittedly both the parties are not residing in India and are said to be permanent residents of USA where the child S. was born.*" The Delhi Court ruled that *the place of jurisdiction of this litigation is not India but USA.*

Petitioner's assertion that he is filing an appeal with Delhi High Court [Petition, Procedural Background, page 5] to vacate the lower court's ruling on jurisdiction cannot be ascertained by Respondent, whose counsel in India informs her that, as of February 5, 2008, he had not received any notice of filing appeal from Petitioner or his counsel in India.

2. After he filed his petition for writ of certiorari, Petitioner filed on January 25, 2008, in the United States District Court, Eastern District of California, a Verified Complaint, case number 2:08-CV-00176-LKK-EFB, stating two causes of action based on the

same alleged violations of his constitutional rights as he claims in his petition for writ of certiorari, to wit:

> First Cause of Action: Violation of Plaintiff's Right to Equal Protection of the Laws of the Fourteenth Amendment (42 U.S.C. § 1983)
>
> Second Cause of Action: Violation of Plaintiff's Rights under Art. IV, § 2, Privileges and Immunities Clause (42 U.S.C. § 1983)

Additionally, in his Third Cause of Action, Petitioner alleges that Respondent, by filing for custody orders in the Sacramento Superior Court, and that the County of Sacramento, by filing support proceedings in New York Family Court, have violated his "Due Process of Laws under the Fourteenth Amendment (42 U.S.C. § 1983)." The Fourth Cause of Action (Fraud) does not address custody jurisdiction.

REASONS WHY THE PETITION SHOULD BE DENIED

I. It would be premature for this Court to grant certiorari because Petitioner's Verified Complaint, filed in the District Court, Eastern District of California on 1/25/2008, raises the very same issues as the petition for certiorari.

Given the numerous filings in this case – in India, New York, California, the U.S. Supreme Court, the District Court in Sacramento – it does not take a

seer to predict that these very same issues will come before this Court again, after Petitioner's Verified Complaint has wound its way through the lower federal courts.

II. Neither the decision below nor the record raised the issues stated in the first Question Presented.

Petitioner's first question, whether California Court of Appeal's determination, that India was not the minor's home state when Respondent filed her custody action in California, violates Petitioner's constitutional rights under the Privileges and Immunities and Equal Protection provisions of the U.S. Constitution was never raised by Petitioner in, nor decided by the California courts. Not even his Petition for Review of the offending decision, which purportedly violated his constitutional rights, contains a single word, phrase, sentence or paragraph that remotely resembles a claim of constitutional violations.

Petitioner cites *In re A.C.*, 130 Cal.App.4th 854 (2005), in support of his claim that he, "a resident of New York has not been treated the same as other litigants in initial child custody jurisdiction determinations in California." However, the facts of the cited case are so far different from the facts of the instant case that the former provides no support for Petitioner's claim that he was "not treated the same as other litigants in initial child custody jurisdiction

determinations in California." In *In re A.C.*, a Mexican child, who had been severely injured in an accident, had to be taken several times to the Shriners' Hospital in Sacramento, California for medical treatment that was not available in Mexico. The Court of Appeal, Fourth District, found that, although the minor had been living in California for most of a six-month period (July 1 – December 31, 2003) prior to the filing of dependency proceedings on December 31, 2003, she was in California solely for medical care and therefore the child's "home state" was Mexico, where her parents continued to live. There were no facts in that case to suggest *forum-shopping*, which is the posture of the instant case. Indeed, *In re A.C.* supports the Third District Appellate Court's determination in the instant case, that the minor's presence in India, which was compelled by Petitioner's own actions, did not make India the child's "home state" under the UCCJEA. Petitioner was treated no differently by the Third District Court of Appeal, than the Fourth District Court of Appeal treated the parents of the Mexican child.

III. The second Question Presented does not involve a federal question.

1. The Uniform Child Custody Jurisdiction and Enforcement Act [UCCJEA], cited in the Question, is not federal legislation and does not raise a federal question.

2. Citation to the federal Parental Kidnaping Prevention Act [PKPA], does not in itself raise a federal question in this case. The court stated in *Thompson v. Thompson*, 484 U.S. 174, 108 S.Ct. 513 (1988):

> "The context of the PKPA therefore suggests that the principal problem Congress was seeking to remedy was the inapplicability of full faith and credit requirements to custody determinations. . . . 'In essence [the PKPA] would impose on States a Federal duty, under enumerated standards derived from the UCCJA, to give full faith and credit to the custody decrees of other States.'"

Thompson, 181-182. The PKPA, by its own terms, does not apply to a foreign country. The PKPA is codified at 28 U.S.C. § 1738A – Full faith and credit given to child custody determinations; subsection (b)(1) provides: "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States. The PKPA does not apply to a dispute involving India.

IV. The Indian court has decided that the United States, not India, is the place of jurisdiction regarding custody of the minor S.

That decision moots the core issue of Petitioner's request for certiorari, whether the California appellate court erred in finding that California, not India, has custody jurisdiction in this case. Under the

UCCJEA [California Family Code §§ 3400-3465], which all parties agree is the law governing custody jurisdiction, when one state (including a foreign country) terminates or stays the proceeding before it because a court of another state (California) is a more convenient forum, then California may exercise UCCJEA jurisdiction. [California Family Code § 3426(a)]. This is a different section from the one relied on by the California Court of Appeal, which focused on the minor's significant connections with California [Calif. Family Code § 3421(a)(2)] but the legal effect is the same: California may exercise initial custody jurisdiction over the minor S.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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